

March 5, 2015

Via Certified Mail, Return Receipt Requested

Angelo Padula, Jr.
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Angelo Padula & Son, Inc.
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Angelo Padula, Jr.
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Angelo Padula & Son, Inc.
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RECEIVED
MAR 11 2015
OFFICE OF THE REGIONAL ADMINISTRATOR

RE: Notice of Violations and Intent to File Suit under the Clean Water Act

To Whom It May Concern:

The Conservation Law Foundation (CLF)¹ hereby gives notice to the addressed persons of its intent to file suit pursuant to Section 505 of the Clean Water Act (the Act), 33 U.S.C. § 1365(a), for violations of the Act specified below. This letter (the Notice) constitutes notice pursuant to 40 C.F.R., part 135, of CLF's intention to file suit in United States District Court for the District of Rhode Island seeking appropriate equitable relief, civil penalties, and other relief no earlier than 60 days from the postmark date of this Notice.

The subject of this action is two-fold. First, Angelo Padula & Son, Inc. (Padula & Son) is discharging stormwater directly associated with an auto salvage facility located at 2 Canna Street, West Warwick, RI 02893 (the Facility), to the waters of the United States without a permit, in violation of 33 U.S.C. §§ 1311(a) and 1342(p)(2)(B). Second, Padula & Son has failed to obtain coverage under any Clean Water Act permit including the Multi-Sector General Permit (MSGP)

¹ CLF is a not-for-profit 501(c)(3) organization dedicated to the conservation and protection of New England's environment.

issued under the Rhode Island Pollutant Discharge Elimination System² (RIPDES) by the state of Rhode Island for industrial sources of polluted stormwater runoff, and failed to comply with the specific requirements of any such permit, in violation of 33 U.S.C. §§ 1342(p)(3)(A) and (p)(4)(A), and 40 C.F.R. §§ 122.26(c)(1) and (e)(1).

BACKGROUND

The main stem of the Pawtuxet River (Waterbody ID RI0006017R-03) is a water body located in the Narragansett Watershed. The Environmental Protection Agency (EPA) has designated the Pawtuxet River as a habitat for “fish, shellfish, and wildlife protection and propagation, aquatic life harvesting, and recreation.”³

EPA has designated Pawtuxet River as impaired pursuant to Section 303(d) of the Act for failure to meet minimum water quality standards for several pollutants.⁴ These pollutants include phosphorus, mercury in fish tissue, and enterococcus.⁵ Stormwater is a significant contributor to these impairments.

Stormwater is water from precipitation events that flows across the ground and pavement after it rains or after snow and ice melt.⁶ Industrial activities, such as material handling and storage, equipment maintenance and cleaning, processing, reclaiming, and wholesale distribution of scrap and waste materials or other operations that occur at industrial facilities, may be exposed to stormwater.⁷ Stormwater from industrial facilities, contaminated with pollutants, is then conveyed into nearby waterbodies.⁸

Padula & Son is required to apply for coverage under a Clean Water Act discharge permit such as the MSGP in order to discharge lawfully. Since at least 2006, Padula & Son has been required to apply for coverage under the MSGP by filing a Notice of Intent (“NOI”). On August 15, 2013, after expiration of the prior MSGP, the Rhode Island Department of Environmental Management

² The Rhode Island MSGP is available at

<http://www.dem.ri.gov/programs/benviron/water/permits/ripdes/pdfs/msgp.pdf>.

³ See 2012 Waterbody Report for the Pawtuxet River Main Stem, *available at* http://ofmpub.epa.gov/tmdl_waters10/attains_waterbody.control?p_list_id=&p_au_id=RI0006017R-03&p_cycle=2012&p_state=RI.

⁴ *Id.*

⁵ *Id.*

⁶ See 40 C.F.R. § 122.26(b)(13).

⁷ See 40 C.F.R. § 122.26(b)(14).

⁸ See 58 Fed. Reg. 61,146, 61,154 (November 19, 1993).

issued a new MSGP requiring all covered facilities to file an NOI for coverage under the 2013 permit.⁹

Padula & Son has failed to obtain coverage under the MSGP or any other valid authorization, at any time. Therefore, Padula & Son is operating in violation of the Clean Water Act.

PERSONS RESPONSIBLE FOR ALLEGED VIOLATIONS

Padula & Son is the person, as defined by 33 U.S.C. § 1362(5), responsible for the violations alleged in this Notice. Padula & Son has operated the Facility since at least 2006, currently advertises as the operator of the Facility, and is registered with the Rhode Island Secretary of State Division of Business Services as the operator of the Facility.¹⁰ Padula & Son and its agents and directors, including but not limited to Angelo Padula, Jr., have operational control over the day-to-day industrial activities at this Facility. Therefore, they are responsible for managing stormwater at the Facility in compliance with the CWA.

LOCATION OF THE ALLEGED VIOLATION

The violations alleged in this Notice have occurred and continue to occur at the automobile salvage yard (SIC 5015) facility located at 2 Canna Street, West Warwick, RI 02893.

ACTIVITIES ALLEGED TO BE VIOLATIONS

Padula & Son has engaged and continues to engage in “industrial activities,” and its operations fall under SIC 5015, within the meaning of 40 C.F.R. §§ 122.26(b)(14)(vi).¹¹ Because the Facility has a primary SIC Code of 5015 and discharges stormwater associated with industrial activity, Padula & Son is required to apply for, obtain coverage, and comply with the requirements of a discharge permit such as the MSGP.

Padula & Son’s industrial activities at the Facility include, but are not limited to: vehicle dismantling; used parts storage; outdoor vehicle and equipment storage; vehicle and equipment maintenance; vehicle, equipment, and parts washing; and liquid storage. These activities are associated with a variety of pollutants, including but not limited to: oil and grease; ethylene glycol; heavy metals; mercury; sulfuric acid; galvanized metals; aluminum; petroleum hydrocarbons;

⁹ See MSGP I(C).

¹⁰ <http://ucc.state.ri.us/CorpSearch/CorpSearchSummary.asp?ReadFromDB=True&UpdateAllowed=&FEIN=000033652>.

¹¹ See MSGP, Appendix B: Facilities and Activities Covered, Table B-1. Automobile Salvage Yards (SIC 5015) facilities are subject to the requirements of the MSGP for stormwater discharges.

suspended solids; arsenic; organics; chlorinated solvents; acid/alkaline wastes; phosphorus; salts; and fuel. The Facility is immediately adjacent to the Pawtuxet River.

Automobile salvage and other industrial activities and materials at the Facility are exposed to precipitation and snowmelt. Precipitation falls on and flows over the Facility, picking up pollutants associated with the Facility's operations. The polluted runoff is then conveyed off-site via site grading, man-made collection systems and conveyances, and the operation of gravity into waters of the United States.¹²

STANDARDS AND LIMITATIONS ALLEGED TO HAVE BEEN VIOLATED

The CWA prohibits the discharge of pollutants to the waters of the United States except in accordance with a valid discharge permit.¹³ Padula & Son discharges stormwater associated with its industrial activity, as defined by 40 C.F.R. § 122.26(b)(14), from its facility into waters of the United States. Because Padula & Son has not obtained coverage for these stormwater discharges under the MSGP or an individual RIPDES permit, it is illegally discharging stormwater without a permit, in violation of 33 U.S.C. §§ 1311(a) and 1342(p)(2)(B).¹⁴ By failing to apply for and comply with the specific requirements of the MSGP, Padula & Son is in violation of 33 U.S.C. §§ 1342(p)(3)(A) and (p)(4)(A), and 40 C.F.R. §§ 122.26(c)(1) and (e)(1).

a. Padula & Son is discharging stormwater to waters of the United States without a permit.

Padula & Son is an industrial discharger with a primary SIC Code of 5015, which means that pursuant to Section 402(p) of the Act, Padula & Son is obligated to apply for coverage under the MSGP or obtain other legal authorization. Because Padula & Son has operated and continues to operate without a permit under Section 402(p), Padula & Son is in violation of Section 301(a) of the Act.

In addition, during storm events, Padula & Son's industrial activities at its Facility have resulted in a "discharge of pollutants" within the meaning of 33 U.S.C. § 1362(12) and "stormwater discharge associated with industrial activity" within the meaning of 40 C.F.R. § 122.26(b)(14), from its Facility on each and every day that there has been a measurable precipitation event of

¹² See 40 C.F.R. § 122.26(c)(i)(E)(6). EPA has determined that precipitation greater than 0.1 inches in a 24-hour period constitutes a measurable precipitation event for the purposes of evaluating stormwater runoff associated with industrial activity.

¹³ 33 U.S.C. § 1311(a).

¹⁴ See 33 U.S.C. § 1362(12); 40 C.F.R. § 122.2; MSGP, Appendix A: Definitions, Abbreviations, and Acronyms (defining the term "discharge of a pollutant" as "any addition of any 'pollutant' to 'waters of the State' from any 'point source'").

above 0.1 inches. There have been many such storm events since 2006. The Facility is generating and conveying pollutants from at least the following “point sources”: vehicles and equipment left outdoors; vehicles driving on and off the Facility; and channels, ditches, discrete fissures, containers, and other conveyances to waters of the United States.¹⁵ The Pawtuxet River is considered a “water of the United States” as defined in 40 C.F.R. § 122.2, and therefore is a “navigable water” as defined in 33 U.S.C. § 1362(7). The Facility is discharging this industrial stormwater without the permit required under Section 402 of the Act, 33 U.S.C. § 1342.

b. Padula & Son is violating the Clean Water Act by failing to obtain coverage and failing to comply with the requirements of the MSGP.

Padula & Son is violating 33 U.S.C. §§ 1342(p)(3)(A) and (p)(4)(A), and 40 C.F.R. §§ 122.26(c)(1) and (e)(1), by failing to apply for, obtain coverage, and comply with the requirements of the MSGP.¹⁶ The Facility has a primary SIC Code of 5015 and must obtain coverage under the MSGP for its stormwater discharges and for stormwater discharges from any co-located industrial activities.¹⁷ Padula & Son’s failure to obtain coverage and comply with the permit conditions is in violation of the MSGP and 33 U.S.C. § 1342(p) of the Clean Water Act.¹⁸

1) Padula & Son Must Develop and Implement a Storm Water Management Plan (SWMP).

As a prerequisite to obtaining coverage under the MSGP, Padula & Son must prepare a Storm Water Management Plan (“SWMP”).¹⁹ The SWMP must include, but is not limited to, the following: information related to a company stormwater pollution prevention team, a site description and general location map, a summary of pollutant sources, a description of control measures, and schedules and procedures pertaining to control measures and monitoring.²⁰ Padula

¹⁵ These discharges constitute “point sources” as defined by 33 U.S.C. § 1362(14) and 40 C.F.R. § 122.2. Under 40 C.F.R. § 122.2 and MSGP Appendix A, “discharge of a pollutant” includes “surface runoff which is collected or channeled by man.”

¹⁶ MSGP parts I and X.

¹⁷ See MSGP parts VIII(Q) and VIII(R).

¹⁸ A thorough search of EPA’s facility databases shows no records and therefore no Clean Water Act permit coverage for Padula & Son. See EPA Enforcement and Compliance History Online (ECHO), <http://echo.epa.gov/facilities/facility-search>; EPA Permit Compliance System (PCS) and Integrated Compliance Information System (ICIS), <http://www.epa.gov/enviro/facts/pcs-icis/search.html>. By contrast, searches of these databases for several other salvage yards throughout Rhode Island showed permit coverage.

¹⁹ See MSGP part V.

²⁰ See MSGP part V(F).

& Son has failed to develop a SWMP in accordance with the MSGP's requirements in violation of the MSGP and the Clean Water Act, 33 U.S.C. § 1342(p).

2) Padula & Son Must Submit to the Rhode Island Department of Environmental Management a Complete Notice of Intent to be Covered under the MSGP.

To be eligible to discharge under the MSGP, Padula & Son must submit a complete Notice of Intent ("NOI") to the Director of the Rhode Island Department of Environmental Management (RIDEM).²¹ Padula & Son has failed to prepare and file an NOI meeting all applicable requirements in violation of the MSGP and the Clean Water Act, 33 U.S.C. § 1342(p).

3) Padula & Son Must Take Control Measures and Meet Water-Quality Effluent Limitations.

To be eligible to discharge under the MSGP, Padula & Son must select, design, install, and implement control measures (including best management practices) to prevent polluted stormwater discharges from reaching nearby waterbodies.²² Padula & Son must address the selection and design considerations set forth in the MSGP, meet the non-numeric effluent limitations established by the MSGP, and meet limits contained in applicable permit effluent limitations guidelines.²³ These control measures must be in accordance with good engineering practices and manufacturer's specifications.²⁴ If the control measures are not achieving their intended effect of minimizing pollutant discharges, the permittee must modify these control measures as expeditiously as practicable.²⁵ Padula & Son has failed to cover the materials and operations that may result in polluted stormwater runoff. Padula & Son has not implemented required control measures in violation of the MSGP and the Clean Water Act, 33 U.S.C. § 1342(p).

4) Padula & Son Must Conduct Routine Facility Inspections.

To be eligible to discharge under the MSGP, Padula & Son must conduct routine inspections by qualified personnel, with at least one member of the Facility's stormwater pollution prevention team participating, of all areas of the Facility where industrial materials or activities are exposed to stormwater.²⁶ Routine inspections must be conducted at least quarterly but in many instances

²¹ See MSGP part I(C)(1)(a).

²² See MSGP part II(A).

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ See MSGP part IV(A).

monthly inspections are most appropriate.²⁷ These inspections must occur when the Facility is in operation.²⁸ The schedule of these inspections must be included in the Facility's SWMP.²⁹ Padula & Son has failed to conduct the required routine inspections in accordance with the MSGP's requirements in violation of the MSGP and the Clean Water Act, 33 U.S.C. § 1342(p).

5) Padula & Son Must Comply with the Required Monitoring and Sampling Procedures.

To be eligible to discharge under the MSGP, Padula & Son must collect and analyze stormwater samples and document monitoring activities consistent with the procedures in the MSGP.³⁰ The MSGP requires different types of analytical monitoring (one or more of which may apply) including semiannual benchmark monitoring, annual effluent limitations guidelines monitoring, and other monitoring as required by the Director.³¹ An operator must monitor outfalls including each outfall identified in the SWMP covered by a numeric effluent limit.³² Required monitoring must be performed after stormwater events that result in an actual discharge on a required schedule.³³ Furthermore, because the Pawtuxet River is an "impaired water" under 33 U.S.C. § 1313(d), Padula & Son must monitor for all pollutants for which Pawtuxet River is impaired.³⁴ All monitoring data collected under the Permit must be reported to RIDEM no later than 31 days after the last day of the monitoring period for all monitored outfalls for the reporting period.³⁵ Padula & Son has failed to conduct the required monitoring under the MSGP and has failed to submit the required monitoring reports to RIDEM in violation of the MSGP and the Clean Water Act, 33 U.S.C. § 1342(p).

6) Padula & Son Must Carry out Required Reporting and Recordkeeping.

Padula & Son must maintain and submit any and all required monitoring data.³⁶ Such monitoring data includes the following: an annual report to RIDEM which includes the Facility's findings from the annual comprehensive site inspection and any documentation of correction actions;³⁷ an Exceedance Report to the Department no later than 30 days after receipt of the lab results if any of

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *See* MSGP part VI.

³¹ *See* MSGP part VI(B).

³² *See* MSGP part VI(A)(1).

³³ *See* MSGP part VI(A)(3).

³⁴ *See* MSGP part VI(B)(3).

³⁵ *See* MSGP part VII(A).

³⁶ *See* MSGP part VII(A).

³⁷ *See* MSGP part VII(B).

the follow-up monitoring shows any exceedances of a numeric effluent limit;³⁸ and any other required reports under the MSGP.³⁹ Padula & Son has failed to maintain the required records and failed to submit all required monitoring data under the MSGP in violation of the MSGP and the Clean Water Act, 33 U.S.C. § 1342(p).

7) Padula & Son Must Comply with the Requirements of MSGP Subpart M.

Padula & Son must also comply with the sector-specific requirements contained in Subpart M of the MSGP.⁴⁰ Subpart M requires automobile salvage yards to implement additional technology-based effluent limits,⁴¹ meet additional SWMP and inspection requirements,⁴² and monitor stormwater discharges for compliance with the benchmark limitations applicable specifically to automobile salvage yards.⁴³ Padula & Son has failed to comply with the additional requirements of Subpart M of the MSGP in violation of the MSGP and the Clean Water Act, 33 U.S.C. § 1342(p).

DATES OF VIOLATION

Each day on which Padula & Son operates its Facility without general permit coverage or discharges stormwater from the Facility without a permit is a separate and distinct violation of Section 301(a) and 402(p)(2)(B) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p)(2)(B).

Each day on which Padula & Son operates its Facility without individual permit coverage or discharges process water from the Facility without a permit is a separate and distinct violation of Section 301(a) of the CWA, 33 U.S.C. §§ 1311(a).

Padula & Son has discharged stormwater without a permit in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), on every day, since at least 2006, on which there has been a measurable precipitation event.

Every day, since at least 2006, on which Padula & Son has failed and continues to fail to apply for, obtain coverage, and comply with the requirements of the MSGP is a violation of Section 402(p)(3)(A) and (p)(4)(A) of the CWA, 33 U.S.C. §§ 1342(p)(3)(A) and (p)(4)(A).

³⁸ See MSGP part VII(C).

³⁹ See MSGP part VII(D).

⁴⁰ See MSGP, Appendix B, Table B-1, Sector M; MSGP part VIII(M).

⁴¹ See MSGP parts VIII(M)(2).

⁴² See MSGP parts VII(M)(3) & (4).

⁴³ See MSGP part VIII(M)(5).

Every day, since at least 2006, on which Padula & Son has failed and continues to fail to apply for, obtain coverage, and comply with the requirements of an individual RIPDES permit is a violation of Section 301(a) of the CWA, 33 U.S.C. §§ 1311(a).

These violations are ongoing and continuous, and barring a change in the stormwater management controls and process water controls at the Facility and full compliance with the permitting requirements of the Clean Water Act, these violations will continue indefinitely.

RELIEF REQUESTED

Padula & Son is liable for the above-described violations occurring prior to the date of this letter, and for every day that these violations continue. Pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4, each separate violation of the Act subjects Padula & Son to a penalty up to \$32,500 per day for each violation which occurred between March 15, 2004 and January 12, 2009, and up to \$37,500 per day for each violation that occurred after January 12, 2009.⁴⁴ CLF will seek the full penalties allowed by law.

In addition to civil penalties, CLF will seek declaratory relief and injunctive relief to prevent further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), and such other relief as permitted by law. CLF will seek an order from the Court requiring Padula & Son to correct all identified violations through direct implementation of control measures and demonstration of full regulatory compliance.


Lastly, pursuant to Section 505(d) of the Act, 33 U.S.C. § 1365(d), CLF will seek recovery of costs and fees associated with matter.

⁴⁴ 40 C.F.R. § 19.2.

CONCLUSION

During the 60-day notice period, CLF is willing to discuss effective remedies for the violations noted in this letter that may avoid the necessity of further litigation. If you wish to pursue such discussions, please have your attorney contact Max Greene within the next 20 days so that negotiations may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing at the conclusion of the 60 days.

Sincerely,


Max Greene, Esq. (RI Bar No. 7921)
Enforcement Litigator
Conservation Law Foundation
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For a thriving New England

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March 5, 2015

Via Certified Mail, Return Receipt Requested

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Dolores D'Agostino
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Carlo Fakhri
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D'Agostinos Auto Sales & Salvage, Inc.
290 Prospect Street
Fall River, MA 02720

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RE: Notice of Violations and Intent to File Suit under the Clean Water Act

To Whom It May Concern:

The Conservation Law Foundation (CLF)¹ hereby gives notice to the addressed persons of its intent to file suit pursuant to Section 505 of the Clean Water Act (the Act), 33 U.S.C. § 1365(a), for violations of the Act specified below. This letter (the Notice) constitutes notice pursuant to 40 C.F.R., part 135, of CLF's intention to file suit in United States District Court for the District of Rhode Island seeking appropriate equitable relief, civil penalties, and other relief no earlier than 60 days from the postmark date of this Notice.

The subject of this action is two-fold. First, D'Agostinos Auto Sales & Salvage, Inc. a/k/a D'Agostinos Auto Salvage a/k/a D'Agostinos Allens Ave Auto Salvage a/k/a Allens Ave Auto Salvage (D'Agostinos Auto) is discharging stormwater directly associated with an auto salvage facility located at 1174 Douglas Ave., North Providence, RI 02904 (the Facility), to the waters of the United States without a permit, in violation of 33 U.S.C. §§ 1311(a) and 1342(p)(2)(B). Second, D'Agostinos Auto has failed to obtain coverage under any Clean Water Act permit including the Multi-Sector General Permit (MSGP) issued under the Rhode Island Pollutant

¹ CLF is a not-for-profit 501(c)(3) organization dedicated to the conservation and protection of New England's environment.

Discharge Elimination System² (RIPDES) by the state of Rhode Island for industrial sources of polluted stormwater runoff, and failed to comply with the specific requirements of any such permit, in violation of 33 U.S.C. §§ 1342(p)(3)(A) and (p)(4)(A), and 40 C.F.R. §§ 122.26(c)(1) and (e)(1).

BACKGROUND

The West River (Waterbody ID RI0003008R-03B) is a water body located in the Narragansett³ Watershed. The Environmental Protection Agency (EPA) has designated the West River as a habitat for “fish, shellfish, and wildlife protection and propagation, aquatic life harvesting, and recreation.”⁴

EPA has designated the West River as impaired pursuant to Section 303(d) of the Act for failure to meet minimum water quality standards for several pollutants.⁵ These pollutants include phosphorus, mercury in fish tissue, and enterococcus.⁶ Stormwater is a significant contributor to these impairments.

Stormwater is water from precipitation events that flows across the ground and pavement after it rains or after snow and ice melt.⁷ Industrial activities, such as material handling and storage, equipment maintenance and cleaning, processing, reclaiming, and wholesale distribution of scrap and waste materials or other operations that occur at industrial facilities, may be exposed to stormwater.⁸ Stormwater from industrial facilities, contaminated with pollutants, is then conveyed into nearby waterbodies.⁹

² The Rhode Island MSGP is available at

<http://www.dem.ri.gov/programs/benviron/water/permits/ripdes/pdfs/msgp.pdf>.

³ See Watershed Assessment for the Narragansett Watershed, *available at*

http://ofmpub.epa.gov/tmdl_waters10/attains_watershed.control?p_huc=01090004&p_state=RI&p_cycle=2012.

⁴ See 2012 Waterbody Report for the West River, *available at*

http://ofmpub.epa.gov/tmdl_waters10/attains_waterbody.control?p_au_id=RI0003008R-03B&p_cycle=2012&p_state=RI.

⁵ *Id.*

⁶ *Id.*

⁷ See 40 C.F.R. § 122.26(b)(13).

⁸ See 40 C.F.R. § 122.26(b)(14).

⁹ See 58 Fed. Reg. 61,146, 61,154 (November 19, 1993).

D'Agostinos Auto is required to apply for coverage under a Clean Water Act discharge permit such as the MSGP in order to discharge lawfully. Since at least 2006, D'Agostinos Auto has been required to apply for coverage under the MSGP by filing a Notice of Intent ("NOI"). On August 15, 2013, after expiration of the prior MSGP, the Rhode Island Department of Environmental Management issued a new MSGP requiring all covered facilities to file an NOI for coverage under the 2013 permit.¹⁰

D'Agostinos Auto has failed to obtain coverage under the MSGP or any other valid authorization, at any time. Therefore, D'Agostinos Auto is operating in violation of the Clean Water Act.

PERSONS RESPONSIBLE FOR ALLEGED VIOLATIONS

D'Agostinos Auto is the person, as defined by 33 U.S.C. § 1362(5), responsible for the violations alleged in this Notice. D'Agostino's Auto has operated the Facility since at least 2006, currently advertises as the operator of the Facility, and is registered with the Rhode Island Secretary of State Division of Business Services as the operator of the Facility.¹¹ D'Agostinos Auto and its agents and directors, including but not limited to Dolores D'Agostino, have operational control over the day-to-day industrial activities at this Facility. Therefore, they are responsible for managing stormwater at the Facility in compliance with the CWA.

LOCATION OF THE ALLEGED VIOLATION

The violations alleged in this Notice have occurred and continue to occur at the automobile salvage yard (SIC 5015) facility located at 1174 Douglas Avenue, North Providence, RI 02904.

ACTIVITIES ALLEGED TO BE VIOLATIONS

D'Agostinos Auto has engaged and continues to engage in "industrial activities," and its operations fall under SIC 5015, within the meaning of 40 C.F.R. §§ 122.26(b)(14)(vi).¹² Because the Facility has a primary SIC Codes of 5015 and discharges stormwater associated with industrial activity, D'Agostinos Auto is required to apply for, obtain coverage, and comply with the requirements of a discharge permit such as the MSGP.

¹⁰ See MSGP I(C).

¹¹ <http://ucc.state.ri.us/CorpSearch/CorpSearchSummary.asp?ReadFromDB=True&UpdateAllowed=&FEIN=000005936>.

¹² See MSGP, Appendix B: Facilities and Activities Covered, Table B-1. Automobile Salvage Yards (SIC 5015) facilities are subject to the requirements of the MSGP for stormwater discharges.

D'Agostinos Auto's industrial activities at the Facility include, but are not limited to: vehicle dismantling; used parts storage; outdoor vehicle and equipment storage; vehicle and equipment maintenance; vehicle, equipment, and parts washing; and liquid storage. These activities are associated with a variety of pollutants, including but not limited to: oil and grease; ethylene glycol; heavy metals; mercury; sulfuric acid; galvanized metals; aluminum; petroleum hydrocarbons; suspended solids; arsenic; organics; chlorinated solvents; acid/alkaline wastes; phosphorus; salts; and fuel. The Facility is immediately adjacent to the West River.

Automobile salvage and other industrial activities and materials at the Facility are exposed to precipitation and snowmelt. Precipitation falls on and flows over the Facility, picking up pollutants associated with the Facility's operations. The polluted runoff is then conveyed off-site via site grading, man-made collection systems, conveyances, and the operation of gravity into waters of the United States.¹³

STANDARDS AND LIMITATIONS ALLEGED TO HAVE BEEN VIOLATED

The CWA prohibits the discharge of pollutants to the waters of the United States except in accordance with a valid discharge permit.¹⁴ D'Agostinos Auto discharges stormwater associated with its industrial activity, as defined by 40 C.F.R. § 122.26(b)(14), from its facility into waters of the United States. Because D'Agostinos Auto has not obtained coverage for these stormwater discharges under the MSGP or an individual RIPDES permit, it is illegally discharging stormwater without a permit, in violation of 33 U.S.C. §§ 1311(a) and 1342(p)(2)(B).¹⁵ By failing to apply for and comply with the specific requirements of the MSGP, D'Agostinos Auto is in violation of 33 U.S.C. §§ 1342(p)(3)(A) and (p)(4)(A), and 40 C.F.R. §§ 122.26(c)(1) and (e)(1).

a. D'Agostinos Auto is discharging stormwater to waters of the United States without a permit.

D'Agostinos Auto is an industrial discharger with a primary SIC Code of 5015, which means that pursuant to Section 402(p) of the Act, D'Agostinos Auto is obligated to apply for coverage under the MSGP or obtain other legal authorization. Because D'Agostinos Auto has operated and

¹³ See 40 C.F.R. § 122.26(c)(i)(E)(6). EPA has determined that precipitation greater than 0.1 inches in a 24-hour period constitutes a measurable precipitation event for the purposes of evaluating stormwater runoff associated with industrial activity.

¹⁴ 33 U.S.C. § 1311(a).

¹⁵ See 33 U.S.C. § 1362(12); 40 C.F.R. § 122.2; MSGP, Appendix A: Definitions, Abbreviations, and Acronyms (defining the term "discharge of a pollutant" as "any addition of any 'pollutant' to 'waters of the State' from any 'point source'").

continues to operate without a permit under Section 402(p), D'Agostinos Auto is in violation of Section 301(a) of the Act.

In addition, during storm events, D'Agostinos Auto's industrial activities at its Facility have resulted in a "discharge of pollutants" within the meaning of 33 U.S.C. § 1362(12) and "stormwater discharge associated with industrial activity" within the meaning of 40 C.F.R. § 122.26(b)(14), from its Facility on each and every day that there has been a measurable precipitation event of above 0.1 inches. There have been many such storm events since 2006. The Facility is generating and conveying pollutants from at least the following "point sources": vehicles and equipment left outdoors; vehicles driving on and off the Facility; and channels, ditches, discrete fissures, containers, and other conveyances to waters of the United States.¹⁶ The West River is considered a "water of the United States" as defined in 40 C.F.R. § 122.2, and therefore is a "navigable water" as defined in 33 U.S.C. § 1362(7). The Facility is discharging this industrial stormwater without the permit required under Section 402 of the Act, 33 U.S.C. § 1342.

b. D'Agostinos Auto is violating the Clean Water Act by failing to obtain coverage and failing to comply with the requirements of the MSGP.

D'Agostinos Auto is violating 33 U.S.C. §§ 1342(p)(3)(A) and (p)(4)(A), and 40 C.F.R. §§ 122.26(c)(1) and (e)(1), by failing to apply for, obtain coverage, and comply with the requirements of the MSGP.¹⁷ The Facility has a primary SIC Code of 5015 and must obtain coverage under the MSGP for its stormwater discharges and for stormwater discharges from any co-located industrial activities.¹⁸ D'Agostinos Auto's failure to obtain coverage and comply with the permit conditions is in violation of the MSGP and 33 U.S.C. § 1342(p) of the Clean Water Act.¹⁹

¹⁶ These discharges constitute "point sources" as defined by 33 U.S.C. § 1362(14) and 40 C.F.R. § 122.2. Under 40 C.F.R. § 122.2 and MSGP Appendix A, "discharge of a pollutant" includes "surface runoff which is collected or channeled by man."

¹⁷ MSGP parts I and X.

¹⁸ See MSGP parts VIII(Q) and VIII(R).

¹⁹ A thorough search of EPA's facility databases shows no Clean Water Act permit coverage for D'Agostinos Auto. See EPA Enforcement and Compliance History Online (ECHO), <http://echo.epa.gov/detailed-facility-report?fid=110009442451>; EPA Permit Compliance System (PCS) and Integrated Compliance Information System (ICIS), <http://www.epa.gov/enviro/facts/pcs-icis/search.html>. By contrast, searches of these databases for several other salvage yards throughout Rhode Island showed permit coverage.

1) D'Agostinos Auto Must Develop and Implement a Storm Water Management Plan (SWMP).

As a prerequisite to obtaining coverage under the MSGP, D'Agostinos Auto must prepare a Storm Water Management Plan ("SWMP").²⁰ The SWMP must include, but is not limited to, the following: information related to a company stormwater pollution prevention team, a site description and general location map, a summary of pollutant sources, a description of control measures, and schedules and procedures pertaining to control measures and monitoring.²¹ D'Agostinos Auto has failed to develop a SWMP in accordance with the MSGP's requirements in violation of the MSGP and the Clean Water Act, 33 U.S.C. § 1342(p).

2) D'Agostinos Auto Must Submit to the Rhode Island Department of Environmental Management a Complete Notice of Intent to be Covered under the MSGP.

To be eligible to discharge under the MSGP, D'Agostinos Auto must submit a complete Notice of Intent ("NOI") to the Director of the Rhode Island Department of Environmental Management (RIDEM).²² D'Agostinos Auto has failed to prepare and file an NOI meeting all applicable requirements in violation of the MSGP and the Clean Water Act, 33 U.S.C. § 1342(p).

3) D'Agostinos Auto Must Take Control Measures and Meet Water-Quality Effluent Limitations.

To be eligible to discharge under the MSGP, D'Agostinos Auto must select, design, install, and implement control measures (including best management practices) to prevent polluted stormwater discharges from reaching nearby waterbodies.²³ D'Agostinos Auto must address the selection and design considerations set forth in the MSGP, meet the non-numeric effluent limitations established by the MSGP, and meet limits contained in applicable permit effluent limitations guidelines.²⁴ These control measures must be in accordance with good engineering practices and manufacturer's specifications.²⁵ If the control measures are not achieving their intended effect of minimizing pollutant discharges, the permittee must modify these control measures as expeditiously as practicable.²⁶ D'Agostinos Auto has failed to cover the materials and operations that may result in polluted stormwater runoff. D'Agostinos Auto has not

²⁰ See MSGP part V.

²¹ See MSGP part V(F).

²² See MSGP part I(C)(1)(a).

²³ See MSGP part II(A).

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

implemented required control measures in violation of the MSGP and the Clean Water Act, 33 U.S.C. § 1342(p).

4) D'Agostinos Auto Must Conduct Routine Facility Inspections.

To be eligible to discharge under the MSGP, D'Agostinos Auto must conduct routine inspections by qualified personnel, with at least one member of the Facility's stormwater pollution prevention team participating, of all areas of the Facility where industrial materials or activities are exposed to stormwater.²⁷ Routine inspections must be conducted at least quarterly but in many instances monthly inspections are most appropriate.²⁸ These inspections must occur when the Facility is in operation.²⁹ The schedule of these inspections must be included in the Facility's SWMP.³⁰ D'Agostinos Auto has failed to conduct the required routine inspections in accordance with the MSGP's requirements in violation of the MSGP and the Clean Water Act, 33 U.S.C. § 1342(p).

5) D'Agostinos Auto Must Comply with the Required Monitoring and Sampling Procedures.

To be eligible to discharge under the MSGP, D'Agostinos Auto must collect and analyze stormwater samples and document monitoring activities consistent with the procedures in the MSGP.³¹ The MSGP requires different types of analytical monitoring (one or more of which may apply) including semiannual benchmark monitoring, annual effluent limitations guidelines monitoring, and other monitoring as required by the Director.³² An operator must monitor outfalls including each outfall identified in the SWMP covered by a numeric effluent limit.³³ Required monitoring must be performed after stormwater events that result in an actual discharge on a required schedule.³⁴ Furthermore, because the West River is an "impaired water" under 33 U.S.C. § 1313(d), D'Agostinos Auto must monitor for all pollutants for which the West River is impaired.³⁵ All monitoring data collected under the Permit must be reported to RIDEM no later than 31 days after the last day of the monitoring period for all monitored outfalls for the reporting period.³⁶ D'Agostinos Auto has failed to conduct the required monitoring under the

²⁷ See MSGP part IV(A).

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ See MSGP part VI.

³² See MSGP part VI(B).

³³ See MSGP part VI(A)(1).

³⁴ See MSGP part VI(A)(3).

³⁵ See MSGP part VI(B)(3).

³⁶ See MSGP part VII(A).

MSGP and has failed to submit the required monitoring reports to RIDEM in violation of the MSGP and the Clean Water Act, 33 U.S.C. § 1342(p).

6) D'Agostinos Auto Must Carry out Required Reporting and Recordkeeping.

D'Agostinos Auto must maintain and submit any and all required monitoring data.³⁷ Such monitoring data includes the following: an annual report to RIDEM which includes the Facility's findings from the annual comprehensive site inspection and any documentation of correction actions;³⁸ an Exceedance Report to the Department no later than 30 days after receipt of the lab results if any of the follow-up monitoring shows any exceedances of a numeric effluent limit;³⁹ and any other required reports under the MSGP.⁴⁰ D'Agostinos Auto has failed to maintain the required records and failed to submit all required monitoring data under the MSGP in violation of the MSGP and the Clean Water Act, 33 U.S.C. § 1342(p).

7) D'Agostinos Auto Must Comply with the Requirements of MSGP Subpart M.

D'Agostinos Auto must also comply with the sector-specific requirements contained in Subpart M of the MSGP.⁴¹ Subpart M requires automobile salvage yards to implement additional technology-based effluent limits,⁴² meet additional SWMP and inspection requirements,⁴³ and monitor stormwater discharges for compliance with the benchmark limitations applicable specifically to automobile salvage yards.⁴⁴ D'Agostinos Auto has failed to comply with the additional requirements of Subpart M of the MSGP in violation of the MSGP and the Clean Water Act, 33 U.S.C. § 1342(p).

DATES OF VIOLATION

Each day on which D'Agostinos Auto operates its Facility without general permit coverage or discharges stormwater from the Facility without a permit is a separate and distinct violation of Section 301(a) and 402(p)(2)(B) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p)(2)(B).

³⁷ See MSGP part VII(A).

³⁸ See MSGP part VII(B).

³⁹ See MSGP part VII(C).

⁴⁰ See MSGP part VII(D).

⁴¹ See MSGP, Appendix B, Table B-1, Sector M; MSGP part VIII(M).

⁴² See MSGP parts VIII(M)(2).

⁴³ See MSGP parts VII(M)(3) & (4).

⁴⁴ See MSGP part VIII(M)(5).

Each day on which D'Agostinos Auto operates its Facility without individual permit coverage or discharges process water from the Facility without a permit is a separate and distinct violation of Section 301(a) of the CWA, 33 U.S.C. §§ 1311(a).

D'Agostinos Auto has discharged stormwater without a permit in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), on every day, since at least 2006, on which there has been a measurable precipitation event.

Every day, since at least 2006, on which D'Agostinos Auto has failed and continues to fail to apply for, obtain coverage, and comply with the requirements of the MSGP is a violation of Section 402(p)(3)(A) and (p)(4)(A) of the CWA, 33 U.S.C. §§ 1342(p)(3)(A) and (p)(4)(A).

Every day, since at least 2006, on which D'Agostinos Auto has failed and continues to fail to apply for, obtain coverage, and comply with the requirements of an individual RIPDES permit is a violation of Section 301(a) of the CWA, 33 U.S.C. §§ 1311(a).

These violations are ongoing and continuous, and barring a change in the stormwater management controls and process water controls at the Facility and full compliance with the permitting requirements of the Clean Water Act, these violations will continue indefinitely.

RELIEF REQUESTED

D'Agostinos Auto is liable for the above-described violations occurring prior to the date of this letter, and for every day that these violations continue. Pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4, each separate violation of the Act subjects D'Agostinos Auto to a penalty up to \$32,500 per day for each violation which occurred between March 15, 2004 and January 12, 2009, and up to \$37,500 per day for each violation that occurred after January 12, 2009.⁴⁵ CLF will seek the full penalties allowed by law.

In addition to civil penalties, CLF will seek declaratory relief and injunctive relief to prevent further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), and such other relief as permitted by law. CLF will seek an order from the Court requiring D'Agostinos Auto to correct all identified violations through direct implementation of control measures and demonstration of full regulatory compliance.

Lastly, pursuant to Section 505(d) of the Act, 33 U.S.C. § 1365(d), CLF will seek recovery of costs and fees associated with matter.

⁴⁵ 40 C.F.R. § 19.2.

CONCLUSION

During the 60-day notice period, CLF is willing to discuss effective remedies for the violations noted in this letter that may avoid the necessity of further litigation. If you wish to pursue such discussions, please have your attorney contact Max Greene within the next 20 days so that negotiations may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing at the conclusion of the 60 days.

Sincerely,



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